

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,
Plaintiff,

v.

CR 05-1849 JH

MELANIA KIRWIN,
Defendant.

**AMENDED ORDER RESCINDING PREVIOUS ORDER
AND DENYING MOTION FOR SUBSTITUTION OF COUNSEL**


THIS MATTER comes before the Court on Defense Counsel Rudolph B. Chavez's Motion for Substitution of Counsel as to Defendant Melania Kirwin [Doc. No. 1222]. Mr. Chavez's motion failed to reveal that he represents Ms. Kirwin's co-defendant, Rafal Mistrzak, in this matter. It was Mr. Chavez's burden to bring that fact to the Court's attention, particularly in light of the unusually large number of defendants and attorneys in this case. Now that the Court is aware of Mr. Chavez's prior representation of Mr. Mistrzak—an inherent conflict of interest—and there having been no showing that both Ms. Kirwin and Mr. Mistrzak have made knowing and voluntary waivers of the conflict, the Court concludes that Mr. Chavez's motion to substitute himself as counsel for Ms. Kirwin should be denied.

IT IS THEREFORE ORDERED that Court's previous Order of May 20, 2008 [Doc. 1311] is **RESCINDED**.

IT IS FURTHER ORDERED that Defense Counsel's Motion for Substitution of Counsel [Doc.1222], is hereby **DENIED**.

IT IS FURTHER ORDERED that Attorney John F. Moon Samore may not withdraw as

counsel of record for Melania Kirwin.



JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE